86-1140

Supreme Court, U.S.
FILED
JAN 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

In the Supreme Court of the United States

OCTOBER TERM, 1986

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, APPELLANT

v.

VERNITA BALDWIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether Section 402(a)(38) of the Social Security Act, 42 U.S.C. (Supp. II) 602(a)(38), which provides that all parents, brothers and sisters who live together shall constitute a single filing unit for purposes of the Aid To Families With Dependent Children (AFDC) program, is unconstitutional as violative of the Takings Clause or the Due Process Clause of the Fifth Amendment.

PARTIES TO THE PROCEEDING

In addition to those named in the caption, the parties are: James G. Ledbetter, Commissioner, Georgia Department of Human Resources; and Wilnetta Baldwin, Lapheitta Baldwin and Schlonda Baldwin, and all others similarly situated.

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Social Security Act, Tit. IV, 42 U.S.C. (& Supp. II) 601 *et seq.*:
- 42 U.S.C. (Supp. II) 602(a)(26)(A) 3
- 42 U.S.C. (Supp. II) 602(a)(38) 2, 3, 5

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court holding the relevant provisions of the Social Security Act unconstitutional (App., *infra,* 1a-34a) is reported at 647 F. Supp. 623.

JURISDICTION

The judgment of the district court (App., *infra,* 35a-36a) was entered on October 17, 1986. A notice of appeal to this Court was filed on November 12, 1986 (App., *infra,* 37a-38a). The jurisdiction of this Court is invoked under 28 U.S.C. 1252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the Constitution provides in pertinent part:

> [N]or shall any person be * * * deprived of life, liberty, or property, without due process of law; nor shall

private property be taken for public use, without just compensation.

Section 402(a)(38) of the Social Security Act, 42 U.S.C. (Supp. II) 602(a)(38), provides in pertinent part:

> A State plan for aid and services to needy families with children must—
>
> * * * * *
>
> provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include—
>
> (A) any parent of such child, and
>
> (B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 606(a) of this title, if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter) * * *.

STATEMENT

A. STATUTORY AND REGULATORY FRAMEWORK

The statutory and regulatory framework is set forth in our jurisdictional statements in *Bowen* v. *Gilliard,* prob. jur. noted, No. 86-509 (Dec. 8, 1986), and *Bowen* v. *Lesko,* No. 86-744 (filed Nov. 5, 1986).[1]

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[1] We are sending copies of our jurisdictional statements in Nos. 86-509 and 86-744 to counsel in this case.

B. PROCEEDINGS IN THIS CASE

1. Appellees are a class of mothers and children who comprise families that receive benefits under the Aid to Families With Dependent Children (AFDC) program. The children fall into two groups. The first group consists of "needy children" on whose behalf the AFDC benefits are paid. The second group consists of siblings who receive child support from a non-custodial parent. For the sake of convenience, we will use the term "appellees" to refer to the appellee-mothers exclusively.

Appellees filed this state-wide class action in the United States District Court for the Northern District of Georgia against the Secretary and state officials responsible for administering the AFDC program in Georgia. The complaint challenged the Secretary's regulations implementing the DEFRA filing-unit provision contained in the Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369, § 2640, 98 Stat. 1145; 42 U.S.C. (Supp. II) 602(a)(38), and the state's conforming administrative practice. Complaint at 10-11. In the alternative, appellees challenged the constitutionality of the statute itself. *Id.* at 10-14. Appellees sought declaratory and injunctive relief to prohibit defendants from requiring that children who receive child-support payments apply for AFDC benefits and assign those child-support payments to the state as a condition of AFDC eligibility under 42 U.S.C. (Supp. II) 602(a)(26)(A). Appellees also sought to enjoin defendants from counting child-support income in calculating a family unit's AFDC benefits. See Complaint at 14-15.

2. On October 17, 1986, after granting appellees' request for class certification, the district court issued an opinion granting appellees' motion for summary judgment, declaring Section 602(a)(38) unconstitutional and granting appellees a permanent injunction (App., *infra*, 1a-34a). The court first rejected appellees' statutory construction arguments, holding that Section 602(a)(38) did

indeed authorize the actions of which they complained. App., *infra,* 6a-12a. The court concluded that "[c]onsideration of the legislative history leads inexorably to the conclusion that Congress intended that children receiving child support who are co-resident siblings of AFDC recipient children be included in the AFDC family filing unit and that the child support income be included in the determination of the AFDC family unit's eligibility" (*id.* at 9a (citations omitted)).

The court then proceeded to hold that the DEFRA filing-unit provision "effects a taking without just compensation and abridges plaintiff child support recipients' substantive due process rights" (App., *infra,* 33a). Addressing first the takings claim, the court found that child-support payments constitute a "protected property interest" and that the challenged statute had reduced the value of that property interest because "child support payments over and above the $50 disregarded are paid to the AFDC family unit in satisfaction of a portion of the payment standard for the family" (*id.* at 14a). The court concluded that the statutory scheme thereby forced co-resident siblings who receive child support "to use their property for the benefit of others," namely the siblings with whom they reside (*id.* at 18a-19a). "If the taking clause means anything," the court continued, "it means that the government cannot force child support recipients 'to bear public burdens which in all fairness should be borne by the public as a whole' " (*id.* at 19a (citation omitted)). The court rejected the defendants' arguments that the "intangible" benefits of membership in the AFDC family unit, such as eligibility for Medicaid benefits, constituted just compensation to the child-support recipient for any contribution he might be thought to have made to the other members of his family (*ibid.*).

The court also held that the DEFRA filing-unit provision violates a fundamental liberty interest of child-

support recipients, *viz.*, "the interest of the child in the support and nurture of his or her parent" (App., *infra,* 28a). Stating that "these child support recipients have been coerced into being wards of the state" by the family filing-unit rule (*id.* at 29a), the court held that the constitutionality of the statute must be assessed under a standard of "rigorous" and "heightened" scrutiny (*ibid.*). The court found that Section 602(a)(38) caused children to lose "two essential attributes of parenthood"—"nurturing and guidance" from their non-custodial parent and "self-esteem and dignity which accompanies being supported by one's own family" (App., *infra,* 29a-30a). Finally, the court found that Congress's amendment of the statute in 1984 was "not narrowly tailored to accomplish the deficit reduction goals" (*id.* at 30a). A more narrowly drawn statute, the court suggested, would count only child-support income that is used to meet the child's pro rata share of family expenses, and would afford children the options of deciding whether to join the AFDC filing unit and whether to assign their income to the state (*id.* at 30a-31a).[2]

THE QUESTION IS SUBSTANTIAL

The question here is subsumed within the question presented in *Bowen* v. *Gilliard,* No. 86-509, and *Kirk* v. *Gilliard,* No. 86-564, in which this Court noted probable jurisdiction on December 8, 1986.[3] Accordingly, the Court should hold this case pending the disposition of those cases, which have been consolidated for argument.

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[2] The court rejected appellees' claims that the family filing-unit amendment violated the Tenth Amendment, the Full Faith and Credit Clause, the Equal Protection component of the Due Process Clause and the Contract Clause (App., *infra,* 2a-26a, 31a-32a).

[3] The same question is also before this Court in *Bowen* v. *Lesko,* No. 86-744 (filed Nov. 5, 1986), and *Reivitz* v. *Lesko,* No. 86-415 (filed Sept. 12, 1986).

CONCLUSION

This case should be disposed of in light of this Court's disposition of *Bowen* v. *Gilliard,* No. 86-509, and *Kirk* v. *Gilliard*, No. 86-564.

Respectfully submitted.

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JANUARY 1987

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. C85-4340A

VERNITA BALDWIN, ON BEHALF OF HERSELF AND HER MINOR CHILDREN, WILNETTA BALDWIN, LAPHEITTA BALDWIN, AND SCHLONDA BALDWIN, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFF,

v.

JAMES G. LEDBETTER, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE GEORGIA DEPARTMENT OF HUMAN RESOURCES; AND OTIS R. BOWEN, M.D., IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANTS.

Oct. 17, 1986

ORDER

This action is before the court on cross motions for summary judgment as well as plaintiff's motion for preliminary injunction. Because a ruling on the motions for summary judgment is dispostive of the request for injunctive relief, the cross motions for summary judgement will be addressed first.

I. FINDINGS OF FACT.

Plaintiff challenges regulations governing Georgia's Aid to Families with Dependent Children (AFDC) program. The AFDC program was authorized by Title IV-A of the

Social Security Act of 1935, 42 USC § 601, *et seq.* This program is a scheme of cooperative federalism intended to provide "financial assistance to needy children and the parents or relatives who live with and care for them . . . ." *Heckler vs. Turner,* ____ U.S. ____, 105 S.Ct 1138, 1141 (1985). The federal government reimburses a participating state for approximately one-half the cost of the program. 42 USC § 603. The participating state in return must submit a plan for the administration of the program for approval by the Department of Health and Human Services. 42 USC § 602(a) & (b). Defendant James G. Ledbetter, acting as Commissioner of the Georgia Department of Human Resources, is responsible for the local administration of the AFDC program in Georgia, while defendant Otis R. Bowen, acting as Secretary of the Department of Health and Human Services (Secretary), is responsible for promulgating federal regulations governing Georgia's state plan.

The original plaintiffs in this action are Vernita Baldwin and her children, Wilnetta, Lapheitta and Schlonda Baldwin. Plaintiff Schlonda Baldwin is the half-sister of Wilnetta and Lapheitta Baldwin. Prior to October 1, 1984, Ms. Baldwin and Schlonda comprised a family unit eligible for and receiving $174 per month in AFDC benefits. This payment represented the maximum grant allowed by Georgia's payment standard for a family of two with no other income.[1]

Schlonda Baldwin's half-sisters, Wilnetta and Lapheitta Baldwin, were not originally included as part of the AFDC family filing unit. These plaintiffs were supported by child support payments made by their father, Willie

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[1] Georgia is given the discretion of calculating the amount of AFDC grants based upon a percentage of a statewide standard of need for a family of a given size. *See* 45 C.F.R. § 233.20. Georgia's payment standard is currently set at approximately sixty-one percent of the need standard, though it is subject to change.

King, pursuant to an agreement approved by the Christians Circuit Court, Hopkinsville, Kentucky, on January 15, 1980. The court approved payments in the amount of $120 per month, but Mr. King voluntarily agreed in 1983 to raise the court-ordered amount to $200 per month. Affidavit of Vernita Baldwin, ¶ 4. Coupled with the $174 in AFDC payments received by Ms. Baldwin and Schlonda, these plaintiffs as a household enjoyed an income of $374 per month prior to October 1, 1984.

The statutory scheme which allowed Ms. Baldwin to exclude Wilnetta and Lapheitta from the AFDC family filing unit was altered in 1984. Section 2640(a) of the Deficit Reduction Act of 1984 (DRA), Pub. L. No. 98-369, 98 Stat. 1145 (1984) (codified at 42 USC § 602(a)(38)), provided in pertinent part:

> That in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the state agencies shall (except as otherwise provided in this part) include—
>
> (A) Any parent of such child, and
>
> (B) Any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 406(a) if such parent, brother, or sister is living in the same house as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family . . . .

This same statutory revision of the Social Security Act also provided that the first $50 of child support payments not be counted as income to the AFDC family filing unit for the purpose of determining eligibility and benefits. DRA, Pub. L. No. 98-369, section 2640(b)(1), 98 Stat. 1145 (1984) (codified at 42 USC § 602(a)(8)(A)(vi)).

Pursuant to the foregoing statutory authorization regarding the inclusion of co-resident family members in

the AFDC family filing unit, the Secretary promulgated the following regulation:

> For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:
>
> . . . .
>
> (B) Any blood-related or adoptive brother or sister.

45 C.F.R. § 206.10(a)(1)(vii)(B). Defendant Ledbetter in turn sent a letter to county directors of AFDC indicating the changes effective October 1, 1984. This letter defined the AFDC family filing unit in Georgia as follows:

> Beginning October 1, 1984, the needs and income of the parent(s) and all minor siblings or half-siblings living with a dependent child who applies for or receives AFDC must be included for eligibility determination and benefit calculation. SSI recipients, step-brothers, and step-sisters are excluded from this requirement. In other words, an A/R will no longer have the option to voluntarily exclude the needs or income of herself or a child from a grant. Similarly, there is no longer any restricted income.
>
> As stated, the A/R does not have the option to exclude any family member. Therefore, if the A/R refuses to include the income and needs of a child or herself or we are unable to verify the income of a previously excluded child, total ineligibility of the entire group results as we are unable to determine eligibility.

Eligibility Services County Letter No. 84-44, August 23, 1984 (Appendix D, Plaintiffs' Motion for Preliminary Injunction).

Ms. Baldwin was told in September of 1984 by the Muscogee County Department of Family and Children Services that the foregoing alterations in AFDC eligibility

and benefit determinations required that she include Wilnetta and Lapheitta in the AFDC family filing unit previously comprised of only herself and Schlonda Baldwin. Aff., ¶ 6. Rather than risk losing AFDC benefits because of ineligibility, Ms. Baldwin allowed the inclusion of Wilnetta and Lapheitta in the AFDC family filing unit. *Id.* As a condition of eligibility, Ms. Baldwin was required to assign to the state Wilnetta and Lapheitta's rights of support from their father. 42 USC § 602(a)(26)(A). Georgia undertook the collection of child support payments from Mr. King pursuant to the child support enforcement program set up by the state as a condition of federal funding. *See* 42 USC §§ 602(a)(27), 651 *et seq.*

Although the payment standard for a family of four is $264 per month, Ms. Baldwin and her family do not qualify for an absolute grant of $264. Because the child support income is deemed available to the entire family, 42 USC § 602(a)(38)(B), the family is assumed to have an income of $150 per month, or $200 less the disregard of the first $50 in child support income. 42 USC § 602(a)(8)(A)(vi). Consequently, Ms. Baldwin's family receives a grant of $114 per month. When this grant is coupled with the $150 in child support collected by the state and the $50 disregarded, Ms. Baldwin has a monthly income of $314, or $60 less than before the amendment of the AFDC family filing unit. Baldwin Aff., ¶¶ 6-7. In short, the family receives funds from the state amounting to the payment standard of $264 which represents a $114 grant and $150 in collected child support monies. The family also receives the $50 disregarded with no strings attached.

The Baldwins are joined in their complaint by plaintiff-intervenors Brenda Maffett and her children, of Atlanta, Georgia. Ms. Maffett has five children, including Melissa Maffett whose father is Tyrone Davis. Maffett Aff., ¶ 3. Prior to 1984, Ms. Maffett's family received AFDC

benefits which were calculated according to the needs and income of all of Ms. Maffett's children except for Melissa who received child support from Mr. Davis. *Id.*, ¶5. Mr. Davis has voluntarily paid $10 per week in child support for Melissa and has promised to raise the amount of support to $25 per week. *Id.*, ¶¶11 & 24. Ms. Maffett has insured that the $10 per week for Melissa is used for Melissa's benefit. *See id.*, ¶ 29.

After the implementation of the new family filing unit rule, plaintiff Maffett was forced to include Melissa in her AFDC family filing unit. *Id.*, ¶ 6. This move evidently did not result in an immediate loss of income because the total monthly child support received by Melissa did not exceed the $50 disregard. 42 USC § 602(a)(8)(A)(vi). Nevertheless, Ms. Maffett insists that the family filing unit amendment has had repercussions in her household. In particular, Ms. Maffett complains that the new rule has resulted in the harassment of Mr. Davis by child support enforcement officials. This harassment, as well as Mr. Davis' general dissatisfaction in having his child placed upon the welfare roles, may result in the cessation of Mr. Davis' otherwise regular visits with Melissa. *Id.*, ¶¶13-20.

II. MOTIONS FOR SUMMARY JUDGMENT.

A. *Count One.*

Count one of plaintiff's complaint alleges that defendants' regulations are not authorized by 42 USC § 602(a)(38). Insofar as this allegation asserts the invalidity of the Secretary's regulation, this court finds that the challenged regulation effectuates the statutory mandate directing inclusion of any co-resident sibling of an AFDC recipient child in the AFDC family filing unit if that sibling lives in the same household and is otherwise eligible for assistance. *Oliver vs. Ledbetter,* 624 F. Supp. 325, 330-31 (N.D.Ga. 1985).

The specific application of the statutory amendment to child support recipients, as represented by defendant Ledbetter's aforementioned letter, also appears to the court to be a straight-forward interpretation of statutory language. In determining whether Congress intended to deem child support income available so that an AFDC family has the choice either of losing eligibility or including that child in the family filing unit, this court looks first to the plain language of the statute and to legislative history if such language is unclear. *Blum vs. Stenson,* ____ U.S. ____, 104 S.Ct. 1541, 1548 (1984).

The statute on its face reveals Congress' intent to require the inclusion of "any brother or sister of such child" if such brother or sister is living in the same household and otherwise eligible for assistance. 42 USC § 602(a)(38)(B). The plain language also indicates an intention to deem "any income of or available for such . . . brother, or sister" available to the AFDC family filing unit. *Id.* Nothing in the language of the statute itself calls the court's attention to any intention to exclude a child support recipient or her monthly income merely because her income is for her support alone and is thus legally restricted.

Even if the court were to conclude that the statute on its face is unclear, legislative history indicates that Congress clearly intended to end the practice whereby an AFDC family could exclude a child support recipient from the family filing unit in order to prevent the inclusion of child support income in the family unit's income. The statutory amendment was the result of over two years of study by both Congress and the Secretary of Health and Human Services.[2] The resulting statutory amendment was explained by the Senate Finance Committee as specifically

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[2] The Senate Finance Committee first proposed to reduce federal AFDC expenditures by prohibiting "[t]he present practice whereby families exclude members with income, such as Social Security or

ending the practice of excluding a child receiving child support from the AFDC family filing unit. *See* DRA, S. Rep. No. 98-169, 98th Cong., 2d Sess. 980 (Comm. print 1984).[3] The Conference Committee approved the Senate proposal in almost identical form with the only modifica-

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child support payments, in order to maximize family benefits . . . ." Tax Equity and Fiscal Responsibility Act of 1981, S. Rep. No. 494, 97th Cong., 2d Sess. 47, 1982 U.S. Code Cong. & Ad. News 823. This proposal was dropped in a Conference Committee with the House of Representatives. H. Conf. Rep. 97-760, 97th Cong., 2d Sess. 446, 1982 U.S. Code Cong. & Ad. News 1226. The Secretary of Health and Human Services submitted a proposal to the U.S. Senate on May 25, 1983, almost identical to the resulting statutory language at issue in this litigation. This proposal was intended to require that the states include "as a member of the AFDC family (both the needs and the accountable income of) . . . the minor siblings of a dependent child for whom aid is claimed and who are living with a dependent child if the siblings are, themselves, deprived of parental support or care and under the age limit selected by the State." *See* Letter from Secretary Margaret M. Heckler to Vice President George Bush (Exhibit A, Federal Defendant's Brief in Opposition to Preliminary Injunction). The Senate Finance Committee approved a version of this propsal indicating their intention to prohibit the exclusion of child support recipients and their income from the ADFC family filing unit. S. Rep. No. 300, 98th Cong., 2d Sess. 165 (Comm. print 1983). Although this proposal was dropped in a conference with the House of Representatives, it resurfaced the following year in the Deficit Reduction Act.

[3] The pertinent portion of this Committee report reads as follow:

> The provision approved by the Committee would require States to include in the filing unit the parents and all dependent minor siblings (except SSI recipients and any step-brothers and step-sisters) living with a child who applies for or receives AFDC . . . . This change will end the present practice whereby families exclude members with income in order to maximize family benefits, and will insure that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole. A similar provision was approved by the Committee last year, but was dropped in conference with the House.

tion being the addition of the provision disregarding the first $50 of child support income when calculating a family's eligibility and benefits. DRA, H. Conf. Rep. No. 98-861, 98th Cong., 2d Sess. 1407, 1984 U.S. Code Cong. & Ad. News 2095 ("requir[ing] states to include in the filing unit the parents and all minor siblings with a dependent child who applies for or receives AFDC"). Consideration of the legislative history leads inexorably to the conclusion that Congress intended that children receiving child support who are co-resident siblings of AFDC recipient children be included in the AFDC family filing unit and that the child support income be included in the determination of the AFDC family unit's eligibility. *Accord Gilliard vs. Kirk,* 633 F Supp. 1529, 1548-51 (W.D.N.C. 1986); *Sherrod vs. Hegstrom,* 629 F. Supp. 150, 152 (D.Ore. 1985); *Maryland Department of Human Resources vs. United States Department of Health and Human Services,* Civil Action No. M-86-605, Slip Op. at 15 (D.Md. April 22, 1986); *Childress vs. Heckler,* Civil Action No. 85-2-1459, Transcript of Bench Ruling at 3-4 (D.Col., January 23, 1986); *Johnson vs. Cohen,* Civil Action No. 84-6277, Slip Op. at 36-37 (E.D.Penn., October 2, 1985); *Shonkwiler vs. Heckler,* Civil Action No. 84-1612-C, Slip Op. at 14 (S.D.Ind., January 31, 1985).

This court is not dissuaded from the foregoing conclusions by plaintiffs' argument that child support recipients are not otherwise eligible for assistance as required by section 602(a)(38). Paragraph 38 requires co-resident siblings to meet "the conditions described in clauses (1) and (2) of section 606(a) . . . ." This referenced section defines a "dependent child" as,

> . . . a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States), or

> physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, step-father, step-mother, step-brother, step-sister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) at the option of the State, under the age of nineteen and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age nineteen, he may reasonably be expected to complete the program of such secondary school (or such training) . . . .

42 USC § 606(a).

Child support recipients are minors and are by definition deprived of parental support by virtue of the absence of one parent from the home. *Oliver,* 624 F. Supp. at 331. The plaintiffs' argument that an individual determination of need for a child support recipient is required has already been thoroughly examined and rejected by this court. *Id.*

> The determination of need is made under 42 USC § 602(a)(7). Paragraph [38], the new family filing unit provision, explicitly states that "in making the determination of paragraph (7)—i.e., the need determination—the state shall include the income of brothers and sisters living with the AFDC child . . . ." [T]he court firmly believes that Congress intended by this language to focus the determination of need not on individual family members, but rather on the neediness of the family unit as a whole.

Id; Accord Gilliard, 633 F. Supp. at 1546. *But see Gorrie vs. Heckler,* 606 F. Supp. 368, 371-72 (D.Minn. 1985);

Gibson vs. Salle, Civil Action No. 38-85-1283, Slip Op. at 5-7 (N.D.Tenn., February 28, 1986).[4]

This court is also not persuaded by plaintiffs' argument that the principle of "actual availability" prohibits deeming legally restricted child support income as available to the AFDC family filing unit. This principle has its origins in congressional consideration of the 1939 amendments to the Social Security Act. Members of Congress were apparently concerned that the states might deem income available to the AFDC family which was not actually contributed to the family. *Heckler,* 105 S.Ct. at 1147-48. The Supreme Court has read the legislative history behind the 1939 amendments to prohibit states from "relying on imputed or unrealizable sources of income artificially to depreciate a recipient's need." *Id.* at 1148. Thus, in *King vs. Smith,* 329 U.S. 309, 319-20 (1968), the Court invalidated an Alabama regulation denying assistance to otherwise eligible children because their mother lived with a man not their father. This principle was also employed in the invalidation of a North Carolina regulation deeming as available to the entire family child support monies received by a sibling of an AFDC recipient. *Gilliard vs. Craig,* 331 F. Supp. 587, 593 (W.D.N.C. 1971), *aff'd without opinion,* 409 U.S. 807 (1972).

While the challenged regulations at issue might be subject to a similar attack as made in the *Gilliard vs. Craig* case absent congressional authorization, such authorization is clearly present in the form of the family filing unit

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[4] Section 602(a)(7) provides in pertinent part:

> . . . The state agency—
> (a) shall, in determining need, take into consideration any other income and resources of any child or relative claiming Aid to Families with Dependent Children, or of any other individual (living in the same home as such child and relative) whose needs the state determines should be considered in determining the need of the child or relative claiming such aid . . .

amendment. The amendment makes specific reference to section 602(a)(7), the need determination paragraph which has been identified as the source of the "availability" principle. It is said that this amendment reflects a presumption that a mother and her children share the expenses of the household such as food and shelter. *Shonkwiler,* Slip Op. at 14. While the court might quarrel with this presumption in view of the use restrictions on child support payments, it is a presumption which the legislative branch has employed and which this court concludes underlies the congressional authorization of deeming child support income as available to the family unit. For the foregoing reasons, the court concludes that Congress authorized deeming the child support income of co-resident siblings of AFDC recipients as available to the family. This new approach to the availability of such income reflects Congress' intention to assess family need and income on an aggregate basis. *Accord Gilliard vs. Kirk,* 633 F. Supp. at 1546-47. *But see Gorrie,* 606 F. Supp. at 371-72; *Gibson,* Slip Op. at 5-7.[5] It is not for this court to substitute its judgment for the Congress' on the way families allocate funds.

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[5] This court should make clear that the foregoing conclusions are unaided by the expert testimony submitted by plaintiffs in support of their motion for summary judgment. This testimony, given by a social welfare expert, may well reflect the consequences of the family filing unit amendment upon AFDC families and upon parents making child support payments. *See* Declaration of Judith Cassetty, at 10-12. Nevertheless, this expert's testimony in no way influences this court's conclusions regarding congressional intent. It may be inconceivable to plaintiffs' expert that Congress intended implementation of the regulations at issue in this litigation, but such conclusion based upon factual judgments regarding the best welfare policy can have no effect upon this court's dispassionate legal analysis of congressional intent.

B. ***Count Two.***

Count two of plaintiffs' complaint alleges that the defendants' interpretation of the family filing unit amendment results in deprivation of property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution. In particular, plaintiffs allege that child support recipients are deprived of their child support without just compensation when they are forced to include their child support income as income available to the AFDC family unit. *See Gilliard vs. Kirk,* 633 F. Supp. at 1551-55; *Johnson,* Slip Op. at 38.[6]

As a preliminary matter, the court must determine whether there are property interests at stake which are protected by the fifth and fourteenth amendments. The parties do not dispute the fact that child support recipients have a property interest in child support payments. A review of Georgia state law confirms the parties' understanding that child support recipients have more than the mere unilateral expectation in child support monies; they have a property interest defined by state law. *Webb's Fabulous Pharmacies, Inc. vs. Beckwith,* 449 U.S. 155, 161 (1980) (citations omitted). Georgia's statutes impose an obligation upon biological parents to support their children during minority. O.C.G.A. §§ 19-17-2 & -24. This statutory obligation does not cease upon divorce and cannot be waived either by agreement of parents or by order of a court. *Collins vs. Collins,* 172 Ga.App. 748, 749 (1984). Consequently, a court-ordered award of child support, such as that accomplished by court approval of the separation agreement between Ms. Baldwin and Mr. King,

[6] Of course, this allegation pertains only to members of the plaintiff class who receive more than $50 per month in child support income. For example, Ms. Maffett, who has in the past received approximately $40 per month in child support income for her daughter Melissa, would not have grounds to challenge the regulations as a taking because the first $50 of child support income is automatically disregarded. 42 USC § 602(a)(8)(A)(vi).

is merely an obligation imposed upon a biological parent in lieu of the statutory obligation. *Thomas vs. Holt,* 209 Ga. 133 (1952). In addition to mandating an enforceable right to child support on behalf of minor children, Georgia law requires that the custodial parent spend child support monies for the benefit of the child. *Id; see also Stewart vs. Stewart,* 217 Ga. 509 (1962). That is, the custodial parent acts as trustee of the child support monies for the child as beneficiary. *Id.*

Having determined that child support recipients have a protected property interest, it is necessary to analyze the extent to which they suffer a diminution in the value of this property interest. Defendants argue that the amendment leaves child support recipients with essentially the same benefit because they receive not only the first $50 in child support payments which is disregarded, but also the remaining child support payments collected by the state and paid to the AFDC family unit. In other words, it is theoretically possible for the custodial parent to sequester money for the benefit of child support recipients alone so that they enjoy the same benefits which they previously enjoyed as the result of the child support payments. This argument ignores the fact that the custodial parent cannot sequester money for the exclusive benefit of the child support recipients other than the first $50 disregarded. Sequestering portions of the remaining child support payments which are collected by the state and paid to the AFDC family unit would subject the custodial parent to possible civil and criminal sanctions for violating a statute requiring that AFDC funds be spent in the best interest of all children in the family unit. *Gilliard vs. Kirk,* 633 F. Supp. at 1552 (citing 42 USC § 605).

Because child support payments over and above the $50 disregarded are paid to the AFDC family unit in satisfaction of a portion of the payment standard for the family, there is undeniably a diminution in the value of the child

support recipient's property interest. This is made clear by reference to the circumstances of the Baldwin family. Prior to the implementation of the amendment, Wilnetta and Lapheitta Baldwin each had a right to enjoy the benefit of $100 of the total $200 per month paid by their father in child support payments. Because the first $50 paid in child support is disregarded, these children retain a right to $25 each per month in child support payments. However, because the remaining $150 is now paid to the Baldwin family in satisfaction of the $264 payment standard for a family of four, Wilnetta and Lapheitta Baldwin can no longer demand their share of this money. Although they previously had a right to $75 apiece, they now have a right only to a pro rata share of the $264 AFDC family budget for a family of four, or a right to $66 apiece. Consequently, under the operation of the amendment, Wilnetta and Lapheitta Baldwin each contribute $75 apiece to the family unit, but receive only $66 apiece from the family unit. Despite the absence of any obligation to support their co-resident siblings or their custodial parent, they are forced to part forever with $9 apiece per month, which is used to pay for the maintenance of the rest of the family unit. In short, child support recipients in the position of Wilnetta and Lapheitta Baldwin are coerced by the amendment into supporting those they have no obligation to support, and this will always be the case where the amount of income deemed is greater than the amount of government assistance paid.[7]

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[7] The foregoing analysis establishes a diminution in the value of the child support recipient's property interest without reference to the individual budget of a particular family unit. Anecdotal evidence of the expenditure of child support money exclusively on the need of a child support recipient would obviously establish a taking if the amendment operated to prevent the purchase of that exclusive benefit. *See Johnson*, Slip Op. at 10-12.

While child support recipients in the position of plaintiffs Wilnetta and Lapheitta Baldwin clearly suffer a diminution in the value of their property interest, this diminution does not automatically result in a taking without just compensation. The Supreme Court has not developed any particular formula for determining when "justice and fairness" require compensation as a result of public action diminishing the value of private property. *Penn Central Transportation Company vs. New York City,* 438 U.S. 104, 124 (1978). This determination usually depends upon the facts and circumstances of a particular case. *Id.* Indeed, it has been said that this determination is as much an exercise of the judgment of the court as it is a product of the application of logic. *Andrus vs. Allard,* 444 U.S. 51, 65 (1979).

Despite the absence of any set formulas, the "Court has been permissive in upholding governmental action that may deny the property owner of some beneficial use of his property or that may restrict the owner's full exploitation of the property, if such public action is justified as promoting the general welfare." *Webb's Fabulous Pharmacies, Inc. vs. Beckwith,* 449 U.S. 155, 163 (1980) (citations omitted). Consequently, the Court has upheld bans upon the marketing of certain products where such bans substantially serve the public interest. *E.g., Andrus,* 444 U.S. at 64-68 (banning the sale of bald and golden eagles). The Court has also upheld significant limitations upon improvement of private property where the limitations are in the interest of the general public. *E.g., Penn Central,* 438 U.S. at 125-29 (limitation on development of historic landmarks such as Grand Central Terminal). Such limitations have denied the property owner free choice in the use of his property. Nevertheless, as the Court noted in the *Andrus* case,

> [T]he denial of one traditional property right does not always amount to a taking. At least where an owner

> possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must be viewed in its entirety. . . . In this case, it is crucial that appellees retain the rights to possess and transport their property, and to donate or devise the [property].

Andrus, 444 U.S. at 65-66. While the limitations on the use of the property are often so severe as to make any profitable use impossible, the Court has concluded that this is a risk of doing business in a civilized community. *Id.* at 67.

The foregoing permissive approach to governmental regulations of the use of private property may be contrasted with those cases in which there has been an actual physical invasion of private property or complete destruction of such property. This contrast is evidenced in the case of *Loretto vs. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). The Court in that case was faced with a statute which required that a landlord permit a cable television company to install facilities on a landlord's property and prohibited a demand of payment from the company in excess of a fee determined to be reasonable by a state agency. The state agency ruled that a one-time one dollar payment was a reasonable fee. Noting that the installation of cable television facilities on the landlord's property amounted to a permanent, physical occupation of the property, the Court concluded that the landlord's right to possess, use and dispose of the property had been destroyed. *Id.* at 435. The right to possess the occupied space and to exclude others from that space was clearly vitiated by the statute. *Id.* Moreover, he could not control the use of the property; that is, he not only was prevented from excluding others, but also from making any non-possessory use of the property. *Id.* at 436. Finally, any legal right to dispose of the occupied space was emptied of any value, since a purchaser would also be

unable to make any use of the property. *Id.* Under such circumstances, the Court concluded that the landlord's property had been taken without just compensation. *Id.* at 441.

Defendants would have this court draw an analogy between the family filing unit amendment and those cases in which the Court has been permissive in upholding regulation of the use of private property. However, unlike the economic actors in those cases, child support recipients have not subjected themselves to the risk of regulation of the use of their child support payments. The coercive nature of the amendment makes clear that child support recipients do not voluntarily subject themselves to AFDC regulations. *Compare Gilliard vs. Kirk,* 633 F. Supp. at 1551-52 *with Whitney vs. Heckler,* 780 F.2d 963, 972 (11th Cir. 1986) (participation by doctors in the Medicare program held voluntary).

A more significant distinction between child support recipients and voluntary economic actors who suffer some limitation on the beneficial use of private property is the actual limitation placed upon child support payments as a result of the amendment. Those child support recipients in the position of plaintiffs Willnetta and Lapheitta Baldwin suffer more than a mere limitation on the use of child support payments. They actually suffer the dispossession of a portion of their child support which is taken from them and used to support the AFDC family unit. In the case of plaintiffs Wilnetta and Lapheitta Baldwin, there is a complete deprivation of at least $18 per month which is collected by the state and given to co-resident siblings. Because the state has collected this money for the AFDC family unit, these plaintiffs no longer have the right to possess the money themselves and the consequential power to exclude the state and its AFDC dependents from possession and use of the money. *Gilliard vs. Kirk,* 633 F. Supp. at 1554. Indeed, they are forced to use their property for

the benefit of others. If the takings clause means anything, it means that the government cannot force child support recipients "to bear public burdens which in all fairness should be borne by the public as a whole." *Id.* (quoting *Armstrong vs. United States,* 364 U.S. 40, 49 (1960)).

Defendants argue that even if the amendment works a taking, there is just compensation in the form of a guarantee that the child support monies will be collected. *See Seagraves vs. Harris*, 629 F.2d 385, 392 (5th Cir. 1980). Defendants also point to other benefits, such as eligibility for the Medicaid program, which accompany membership in the AFDC family unit. *See* 42 USC § 1396(a)(10). Recognizing that child support recipients do receive these benefits, the court cannot conclude that these benefits amount to just compensation. Just compensation means the fair market value of the property on the date it was appropriated. *Kirby Forrest Industries, Inc. vs. United States*, 467 U.S. 1, 10 (1984). "Under this standard, the owner is entitled to receive 'what a willing buyer would pay in cash to a willing seller' at the time of the taking." *Id.* (citations omitted). The court cannot conclude that the rather intangible guarantees which defendants postulate amount to just compensation would be equivalent to a cash payment of the amount of child support payments which child support receipients are now forced to spend upon the AFDC family unit. For example, the court cannot assume that Wilnetta and Lapheitta Baldwin would accept the status of a ward of the state in return for anything less than the payment in cash of the money which they are forced to spend on the other members of their family.

For the foregoing reasons, the court concludes that the AFDC family filing unit amendment works a taking without just compensation when applied to child support recipients in the position of plaintiffs Wilnetta and

Lapheitta Baldwin. Defendants may not enforce the amendment without compensating such child support recipients in cash.

C. *Count Three.*

Count three of plaintiffs' complaint alleges that defendants' interpretation of the family filing unit amendment violates the Tenth Amendment to the United States Constitution. In particular, plaintiffs contend that the amendment forces custodial parents to violate their duty under state law to use the child support payments for the support and maintenance of the designated recipients. By forcing custodial parents to breach a state-imposed duty, plaintiffs contend that the amendment violates the tenth amendment by intruding impermissibly into state family law, an area traditionally governed by state law.

The tenth amendment provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Pointing out that this amendment may serve at most to protect the sovereign State of Georgia in its control over family law, defendants argue that plaintiffs lack standing to assert the rights of the state. Defendants do not deny that plaintiffs have met the article III requirements of standing in that they have suffered distinct injury traceable to the challenged conduct of defendant. *See Duke Power Company vs. Carolina Environmental Study Group*, 438 U.S. 59, 72 (1978). Rather, defendants suggest that none of the plaintiffs is a proper party to assert a tenth amendment challenge.

Although plaintiffs have alleged injuries sufficient to meet the "case or controversy" requirement, the court agrees with defendants that a plaintiff "generally must assert his own legal rights and interest, and cannot rest his claim to relief on the legal rights or interests of third parties." *Worth vs. Seldon*, 422 U.S. 490, 499 (1975). This

prudential limitation on standing is meant to avoid the adjudication of rights which the third party may not want to assert and to insure the most effective advocacy of the rights at issue. *Duke Power Company*, 438 U.S. at 80. These prudential considerations "serve to limit the role of the courts in resolving public disputes. Essentially, the standing question in such cases is whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." *Worth*, 422 U.S. at 500. Of course, there are circumstances where the underlying justifications for this prudential limitation are absent. For example, where the relationship of the plaintiff to the third person is such that the enjoyment of a third party's right is inextricably connected with the activity the party wishes to pursue, courts can rest assured that adjudication of a third party's rights is appropriate and not an exercise in abstract analysis. *Singleton vs. Wulff*, 428 U.S. 106, 114-115 (1976). This is particularly true where physicians are advocating the rights of their patients. *See id.*

The prudential limitations upon this court's jurisdiction argue against recognizing plaintiffs as the proper parties to assert Georgia's tenth amendment rights. It is evident that the third party not before this court, the State of Georgia, may not wish to assert its tenth amendment rights in the context of its participation in the AFDC program. Furthermore, there is an absence of the kind of special relationship identified in cases such as *Singleton vs. Wulff* between the plaintiff and the third party. Indeed, the interest of plaintiffs and that of the State of Georgia may be antagonistic to the extent that Georgia, through its agent, defendant Ledbetter, has cooperated in the implementation of the challenged regulations. This is a classic case for invoking the prudential limitation against the assertion of third-party rights.

In sum, the court concludes that the plaintiffs are not proper parties to raise a tenth amendment claim.

D. ***Court Four.***

Court four of plaintiffs' complaint alleges that "[i]n order to accord full faith and credit, as required by 28 USC § 1738, to the state court judgments which legally restrict child support to the use of the child on whose behalf it is paid, [the amendment] must be construed as excluding" such payments from income available to the AFDC family unit. The full faith and credit provision cited in plaintiffs' complaint does not provide a barrier to congressional action, but rather requires a recognition of a state court's judgments by every other court within the United States. The statute by its very terms is inapplicable to the enforcement of a congressional mandate by administrative agencies.

> The records and judicial proceedings of any court of any State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such . . . records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 USC § 1738.

In any event, full faith and credit need not be strictly accorded where Congress has indicated a policy contrary to a particular state judgment. *See American Mannex Corp.*

vs. Rozands, 462 F.2d 688, 690 (5th Cir.), *cert. denied*, 409 U.S. 1040 (1972) (cases cited therein). In short, there is nothing inherent in the full faith and credit statute which limits congressional action taken in amending the AFDC family filing unit.

E. ***Counts Five and Six.***

Counts five and six of plaintiffs' complaint allege deprivations of equal protection and due process guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiffs' briefs have fleshed out the specific ways in which the amendment violates plaintiffs' equal protection, substantive due process and procedural due process rights. The alleged violations of these various rights will be considered *seriatim*.

1. ***Equal Protection.***

Plaintiffs allege a violation of their right to equal protection because the family filing unit amendment impermissibly distinguishes between child support recipients who live with siblings receiving AFDC benefits and those who do not live with siblings receiving AFDC benefits. Additionally, plaintiffs contend that the amendment results in disparate treatment between plaintiffs who receive child support and those child support recipients who are not forced to apply for AFDC benefits because of certain exclusions in the law. Plaintiffs point to the treatment of children of absent military personnel and the children of aliens who are not affected by the family filing unit amendment.

The first step in determining whether equal protection under the laws has been denied a person is a determination of whether persons who are similarly situated have been subjected to disparate treatment. *Johnson vs. Smith*, 696 F.2d 1334, 1336 (11th Cir. 1983). "Only when a govern-

mental unit adopts a rule that has a special impact on less than all the persons subject to its jurisdiction does the question whether this principle [equal protection of the laws] is violated arise." *Id.* (quoting *New York City Transit Authority vs. Beazer*, 440 U.S. 568, 587-88 (1979)). In determining whether a group of persons is similarly situated with another group, this court is enjoined to look first at the purpose of the law giving rise to the alleged classifications. *Johnson*, 696 F.2d at 1336-37 (citations omitted).

With this standard in mind, it is evident that plaintiffs' equal protection claim does not even allege disparate treatment of similarly situated persons. The amendment was intended to include all co-resident siblings of AFDC recipient children who are otherwise eligible for AFDC assistance so that the AFDC family filing unit accurately reflects the income and needs of the entire economic unit. Therefore, child support recipients are similarly situated for the purposes of the amendment if they are otherwise eligible for AFDC benefits and live with siblings receiving such benefits. Child support recipients who do not live with siblings receiving AFDC benefits are not in the same situation as the class of plaintiffs receiving child support. They are not required to apply for AFDC benefits because they do not live in a household with current AFDC recipients. In short, they are not even subject to the jurisdiction of defendants.

The alleged differentiation between plaintiffs and the children of military personnel and aliens also fails to identify a similarly situated group. Children of military personnel who are absent from the home because of military duty are by definition not children deprived of parental support and thus otherwise eligible within the meaning of the challenged regulations. *See* 42 USC § 606(a)(1). Children of aliens not permanently residing in the United States are

also by definition not children otherwise eligible for financial assistance. *See* 42 USC § 602(33). Such children are not considered dependent children. *Id.*[8]

2. *Procedural Due Process*

Plaintiffs also invoke the protection of procedural due process. They contend that the absence of any individualized determination that child support monies are actually available to co-resident siblings receiving AFDC benefits deprives plaintiff child support recipients of their right to a pre-deprivation hearing. *See Gorrie*, 606 F. Supp. at 373. Even if this argument had merit standing alone, it is rendered moot by this court's earlier conclusion that child support recipients in the position of plaintiffs Wilnetta and Lapheitta Baldwin suffer a taking without just compensation. Because defendants may not now take child support payments without just compensation, no deprivation will occur for which a pre-deprivation hearing is necessary. That is, those plaintiffs such as Wilnetta and Lapheitta Baldwin who may be said to have suffered a deprivation of a property interest will not suffer any deprivation under this court's ruling necessitating the provision of procedural protections.[9]

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[8] Congress was careful to include the caveat "except as otherwise provided in this part" when enacting the family filing unit amendment. 42 USC § 602(a)(38). This caveat must be read as leaving intact those consistent statutory provisions such as the rule regarding the children of aliens.

[9] If this court were to address the necessity of procedural protections under the circumstances of this case, it would be the court's inclination to conclude that no individual has a right to a particularized determination that their family is extraordinary in that child support benefits are not used to meet at least a portion of common household needs. *See Bi-Metallic Investment Company vs. State Board of Equalization*, 239 U.S. 441, 445 (1915). That is, the presumption that

3. *Substantive Due Process.*

Plaintiffs finally argue that the family filing unit amendment abridges their liberty interests as guaranteed by the substantive due process clauses of the fifth and fourteenth amendments. To the extent that plaintiffs rely upon the effect upon the liberty interest or child support recipients, this court agrees for the following reasons.

The Supreme Court "has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause . . . ." *Cleveland Board of Education vs. LaFleur*, 414 U.S. 632, 639 (1974). Even though there is no explicit protection for such matters in the Constitution, the Court had consistently recognized that a so-called "right of privacy" is implicit in the notion of liberty. *Carey vs. Population Services International*, 431 U.S. 678, 684-85 (1977). This right of privacy establishes "a private realm of family life which the state cannot enter." *Prince vs. Massachusetts*, 321 U.S. 158, 166 (1944).

That the Court has been willing to find protection for the institutions of marriage and family should come as no great surprise to students of our Constitution. The ninth amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The language and the history of this amendment provide ample support for the proposition that the liberty protected by the substantive due process clause is not restricted to those rights specifically mentioned in the Bill of Rights. *Griswold vs. Connecticut*, 381 U.S. 479, 493 (1965) (Goldberg, J., concurring); *see id.* at 484.

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child support monies are used to benefit the AFDC family unit is a determination of a legislative fact rather than an adjudicative fact. *Atkins vs. Parker*, ____ U.S. ____, 105 S.Ct. 2520, 2530 (1985).

While substantive due process analysis presents the spectre of jurisprudence which depends upon the personal philosophy of a particular judge, *see Moore vs. City of East Cleveland*, 431 U.S. 494, 502 & n. 8 (1977) (plurality opinion), this danger has been minimized by commitment to the traditions and collective conscience of the American people. *Griswold*, 381 U.S. at 493 (Goldberg, J., concurring). Thus, the Court has asked whether the right implicated "is of such a character that cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'. . . ." *Id.* (quoting *Powell vs. Alabama*, 287 U.S. 45, 67 (1932)).

This recourse to the traditions and conscience of the country has been responsible for the Court's willingness to recognize the aforementioned right of privacy surrounding family life. "Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." *Moore*, 431 U.S. at 503-04 (footnotes omitted). In particular, the Court has recognized the traditional role or parents in raising their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince*, 321 U.S. at 166 (citation omitted); *see also Wisconsin vs. Yoder*, 406 U.S. 205, 232 (1972). A special solicitude for the parental role has led the Court to protect the family against various unjustified intrusions. *See, e.g., Moore*, 431 U.S. at 500-01 (right of grandparents to raise grandchildren); *Pierce vs. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer vs.*

Nebraska, 262 U.S. 390, 399-401 (1923) (both cases upholding the right of directing the upbringing and education of children).

If the role of the parent is so fundamental as to deserve special protection, then certainly the child has the right to enjoy the nurturing and guidance afforded by a parent willing to discharge his or her obligations. When a child's upbringing is directed by a parent, that child is necessarily the recipient of the parental values. The fact of parental support is perhaps as important as any value which a parent can pass along to a child. The child learns by example that offspring must be cared for and not left to the mercy of other relatives or of the state. The absence of support may well result in wholly different expectations; deprived of a role model, a child might conclude that the obligations of parenthood cease at the moment of procreation.

The interest which a child has in choosing at least whether he or she either will be a ward of the state or a valued member of a family is made painfully clear in the case of the child support recipient plaintiffs. Although these children do not experience the traditional two-parent family, they do enjoy their status as children whose parents live up to their obligations. They enjoy the distinction of a non-custodial parent who offers not only financial support, but also moral and emotional support. Living in an otherwise economically disadvantaged household, these child support recipients gain self-esteem and dignity from being cared for by their own; they are reassured that despite their disadvantages, they are no different from the more well-heeled members of our society.

To be sure, the interest of the child in the support and nurture of his or her parent is not a liberty interest which has been explicitly recognized as protected by the due process clause. "But unless we close our eyes to the basic reasons why certain rights associated with the family have

been accorded shelter under the . . . Due Process Clause, we cannot avoid applying the force and rationale of these precedents to the family choice involved in this case." *Moore*, 431 U.S. at 501.

Just because the right at stake in this action is fundamental does not mean that the challenged amendment is automatically subjected to rigorous scrutiny. *Zablocki vs. Redhail,* 434 U.S. 374, 386-87 (1978). It must appear that the governmental regulation "directly and substantially" interferes with rights at stake before heightened scrutiny is applied. *Lyng vs. Castillo*, ____ U.S. ____, 106 S.Ct. 2727, 2729 (1986) (citations omitted). Only when there is such an interference does the court ask whether the purpose of the governmental regulation is important or compelling and whether the government has chosen sufficiently tailored means for achieving its purpose. *Zablocki*, 434 U.S. at 388; *Moore*, 431 U.S. at 499.

A review of the potential effects of the family filing unit amendment convinces this court that there is a direct and substantial interference with the fundamental rights at stake. Unlike the circumstances in the case of *Lyng vs. Castillo*, the child support plaintiffs in this action were not voluntary participants in a governmental welfare program prior to the implementation of the challenged regulation. Moreover, unlike the circumstances in the *Lyng vs. Castillo* case, the child recipient plaintiffs have not merely been forced to rearrange an incident of family life. 106 S.Ct. at 2730 (conditioning continued participation by unrelated food stamp recipients on the preparation of meals together). Instead, these child support recipients have been coerced into being wards of the state with all the consequences that has for their relations with their non-custodial parents.

In particular, these children stand to lose the two essential attributes of parenthood which this court has identified as at stake. First, these children face the prospect of

less nurturing and guidance from their non-custodial parent as a result of fewer contacts with that parent. The non-custodial parent is apt to be discouraged from continuing to play a supportive role when his or her money is being collected by the state and paid to other chidren. Such resentment is evidenced by the record. Maffett Aff., ¶¶ 13-20. The mere interposition of the government as paying agent may itself mean less contacts with the child.

In addition to the direct effect upon the relationship between the child and the non-custodial parent, the child support recipient stands to lose that self-esteem and dignity which accompanies being supported by one's own family. While the very youngest children may not recognize their status, children of sufficient age to appreciate the source of clothing and other personal items will know that they are not self-sufficient. They will undoubtedly lose sight of the valuable lessons which accompany the support of one's parents. Their new-found circumstances may even generate a "feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown vs. Board of Education*, 347 U.S. 483, 494 (1954).

Although the justification for intruding into the personal choice of a child to be supported either by the state or by a parent may well be important in light of the current deficit crisis, it is clear that the AFDC family filing unit amendment was not narrowly tailored to accomplish the deficit reduction goals. Congress can still deem an incremental share of child support payments of co-resident siblings available to the AFDC family unit for the purpose of insuring that the AFDC family unit does not receive more government funds than are actually necessary for its support. The documented experience of AFDC families will provide the yardstick by which to measure that portion of child support payments received by co-resident siblings which inure to the benefit of other family members. Such

a statute might deem a percentage of Wilnetta and Lapheitta Baldwin's child support income as being available to the whole family to the extent that their pro rata contribution to family expenses lessens the expenditures otherwise required to provide for the basic needs of the other family members. Under a more narrowly-drawn statute Wilnetta and Lapheitta Baldwin would retain the right to choose whether they want to be members of the AFDC family unit and whether they wish to elect voluntarily to assign their support payments in return for guarantees and other government assurances.

For the foregoing reasons, this court concludes that the AFDC family filing unit amendment abridges the substantive due process rights of the child support recipient plaintiffs. *Accord, Gilliard vs. Kirk*, 633 F. Supp. at 1563.[10]

F. ***Count Seven.***

Plaintiffs allege finally that the amendment results in the impairment of obligation of contract in violation of Article I, Section 10, Clause 1 of the United States Constitution. Because custodial parents are obligated to spend child support monies for the benefit of the recipient children, plaintiffs claim that the challenged amendment forces the custodial parents to breach their contractual obligations. It is clear that plaintiffs represented by Ms. Baldwin have contractual obligations with regard to child

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[10] The foregoing analysis assumes that child support recipients will not avoid the effect of the amendment by moving out of the household they share with siblings on AFDC. Of course, if the amendment has the unintended effect of actually forcing child support recipients to live with other relatives, the court's conclusions regarding the abridgement of their substantive due process rights would remain unchanged. Forcing children to move out of the household with the custodial parent would be an even more egregious interference with the child's liberty interest. *See Gilliard vs. Kirk*, 633 F. Supp. at 1558.

support monies paid pursuant to an agreement. However, the only obligation in the case of child support payments made voluntarily is the general obligation imposed by Georgia law upon custodial parents. Consequently, the court reads count seven as applying only to those custodial parents who receive child support payments on behalf of children pursuant to agreements, court-approved or otherwise.

Having defined the contractual obligation at issue, it is evident that the amendment is not even subject to attack for the alleged infringement. The contract clause proscribes only state legislation "impairing the obligation of contracts. . . ." U.S. Const. art. I, § 10, cl. 1. By its very definition, this clause does not operate to limit federal enactments. *Pension Benefit Guaranty Corporation vs. R. A. Gray and Company*, ____ U.S. ____, 104 S.Ct. 2709, 2719 n. 9 (1984). Because this clause operates only to restrict state legislative enactments, it is difficult to conceive how it could operate to limit the family filing unit rule. Naturally, neither the statutory amendment nor the federal regulation fall within the prohibition of the contract clause.

Defendant Ledbetter's letter was not itself a separate legislative enactment. Rather, his letter directed to county directors of AFDC merely evidenced the implementation of federal law. In view of the fact that his letter was issued pursuant to federal authority requiring implementation of the family filing unit amendment as a condition of federal funding, the court concludes that the letter is part and parcel of a federal enactment which is immune from contract clause attack. For the foregoing reasons, the court concludes that the contract clause does not operate as a limitation upon the family filing unit amendment.

In sum, defendants' motions for summary judgment are GRANTED IN PART and DENIED IN PART. Plaintiffs' cross motion for summary judgment is GRANTED IN PART and DENIED IN PART.

III. MOTION FOR PRELIMINARY INJUNCTION

Although the disposition of the cross motions for summary judgment entitles plaintiffs to injunctive relief, such relief is appropriate characterized as permanent rather than preliminary relief. Plaintiff's motion for preliminary injunction is accordingly DENIED as moot.

IV. CONCLUSION

Defendants' motions for summary judgment are GRANTED IN PART and DENIED IN PART. Plaintiffs' motion for summary judgment is GRANTED IN PART and DENIED IN PART. Plaintiffs' motion for preliminary injunction is DENIED as moot.

Because the family filing unit amendment effects a taking without just compensation and abridges plaintiff child support recipients' substantive due process rights, plaintiffs are entitled to permanent injunctive relief. Defendants are hereby enjoined from forcing child support recipients who are co-resident siblings of AFDC family members to apply for AFDC benefits and to assign their child support to the State of Georgia as a condition of their co-resident siblings' eligibility for AFDC benefits. Defendants are also enjoined from terminating or reducing the AFDC grants of AFDC family units based on child support income received by co-resident siblings who do not choose to be members of the AFDC family filing unit. Defendants are furthermore ORDERED to inform all class members of their rights under this order by way of a notice to be included with AFDC checks delivered during the month of November and by way of notice to any families whose AFDC benefits have been terminated by the State of Georgia as a result of the family filing unit amendment.

SO ORDERED, this 17th day of October, 1986.

/s/ J. OWEN FORRESTER

J. Owen Forrester
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action
No. C85-4340A

VERNITA BALDWIN, ON BEHALF OF HERSELF AND HER MINOR CHILDREN, WILNETTA BALDWIN, LAPHEITTA BALDWIN, AND SCHLONDA BALDWIN, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFF,

v.

JAMES G. LEDBETTER, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE GEORGIA DEPARTMENT OF HUMAN RESOURCES: AND OTIS R. BOWEN, M.D., IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANTS.

Oct. 22, 1986

JUDGMENT

This action came on for consideration and hearing before the Court, Honorable J. Owen Forrester, United States District Judge, and the issues having been considered and a decision having been rendered,

IT IS ORDERED AND ADJUDGED that the defendants, JAMES G. LEDBETTER, in his official capacity as Commissioner of the Georgia Department of Human Resources, and OTIS R. BOWEN, M.D., in his official capacity as Secretary of the United States Department of Health and Human Resources, and those acting in concert

with them are enjoined from forcing child support recipients who are co-resident siblings of AFDC family members to apply for AFDC benefits and to assign their child support to the State of Georgia as a condition of their co-resident siblings' eligibility for AFDC benefits Defendants are also enjoined from terminating or reducing the AFDC grants of AFDC family units based on child support income received by co-resident siblings who do not choose to be members of the AFDC family filing unit,

FURTHER ORDERED AND ADJUDGED that defendants shall inform all class members of their rights by way of a notice to be included with AFDC checks delivered during the month of November and by way of notice to any families whose AFDC benefits have been terminated by the State of Georgia as a result of the family filing unit amendment.

Dated at Atlanta, Georgia this 17th day of October 1986.

FILED AND ENTERED
IN CLERK'S OFFICE
October 17, 1986
Luther D. Thomas, Clerk

By: /s/ JANICE C. MURRAY
Janice C. Murray,
Deputy Clerk

Luther D. Thomas,
Clerk of the Court

By: /s/ JANICE C. MURRAY
Janice C. Murray,
Deputy Clerk
October 17, 1986

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action
No. C85-4340A

VERNITA BALDWIN, ON BEHALF OF HERSELF AND HER MINOR CHILDREN, WILNETTA BALDWIN, LAPHEITTA BALDWIN, AND SCHLONDA BALDWIN, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFF,

v.

JAMES G. LEDBETTER, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE GEORGIA DEPARTMENT OF HUMAN RESOURCES: AND OTIS R. BOWEN, M.D., IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANTS.

Nov. 12, 1986

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that the defendant Otis R. Bowen, M.D., hereby appeals to the Supreme Court of the United States from the final Order and Judgment entered in this action on October 17, 1986.

This appeal is taken pursuant to 28 U.S.C. §§ 1252 and 2101.

This 12th day of November, 1986.

Respectfully submitted,

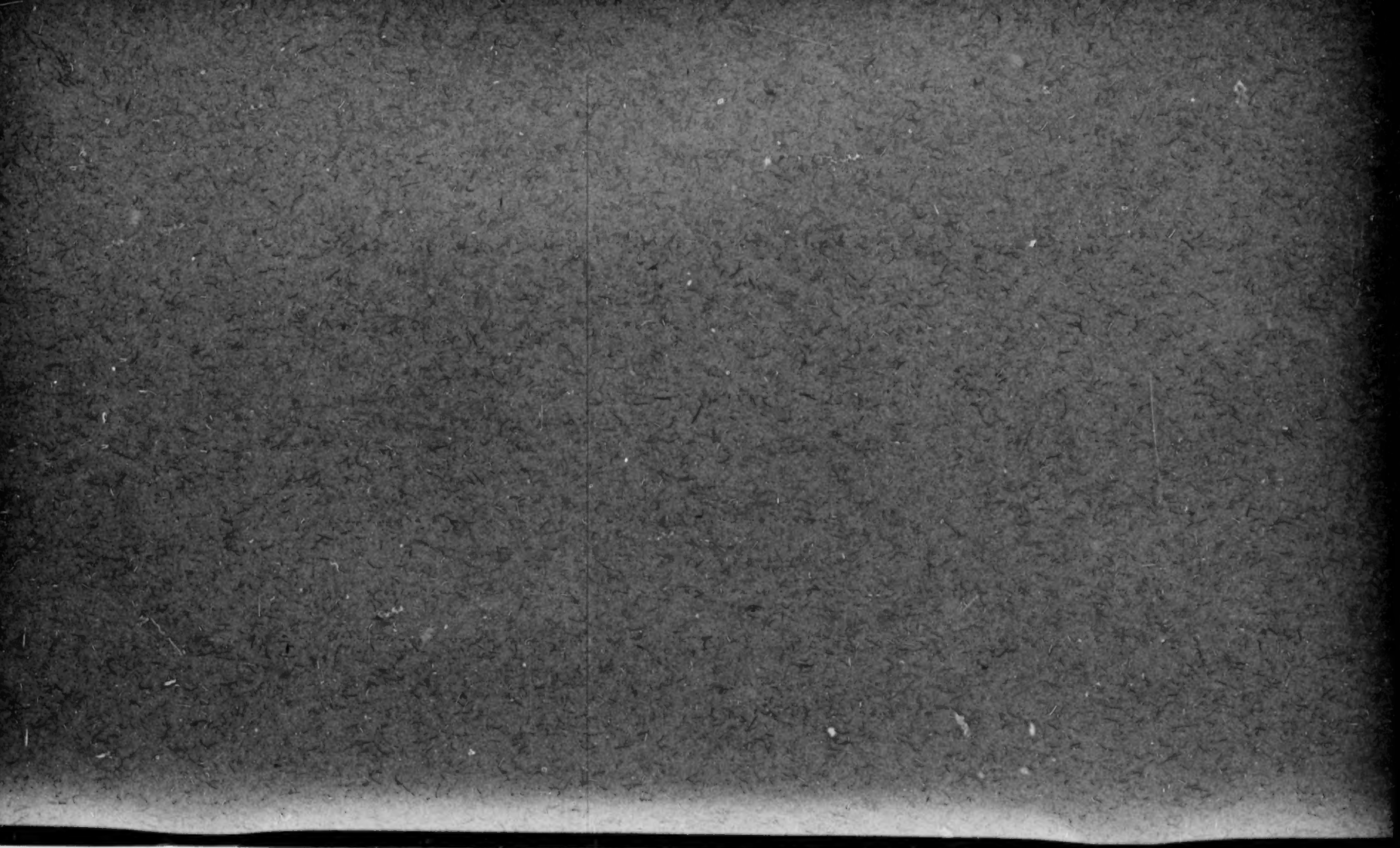
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U.S. GOVERNMENT PRINTING OFFICE 1986—181-483 40146



Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

Nos. 86-1140 and 86-1161

In The

Supreme Court of the United States

October Term, 1986

OTIS R. BOWEN, Secretary of Health and Human Services,
Appellant,

vs.

VERNITA BALDWIN, *et al.*,
Appellees.

JAMES G. LEDBETTER, In his official capacity as Commissioner of the Georgia Department of Human Resources,
Appellant,

vs.

VERNITA BALDWIN, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of Georgia

MOTION TO AFFIRM

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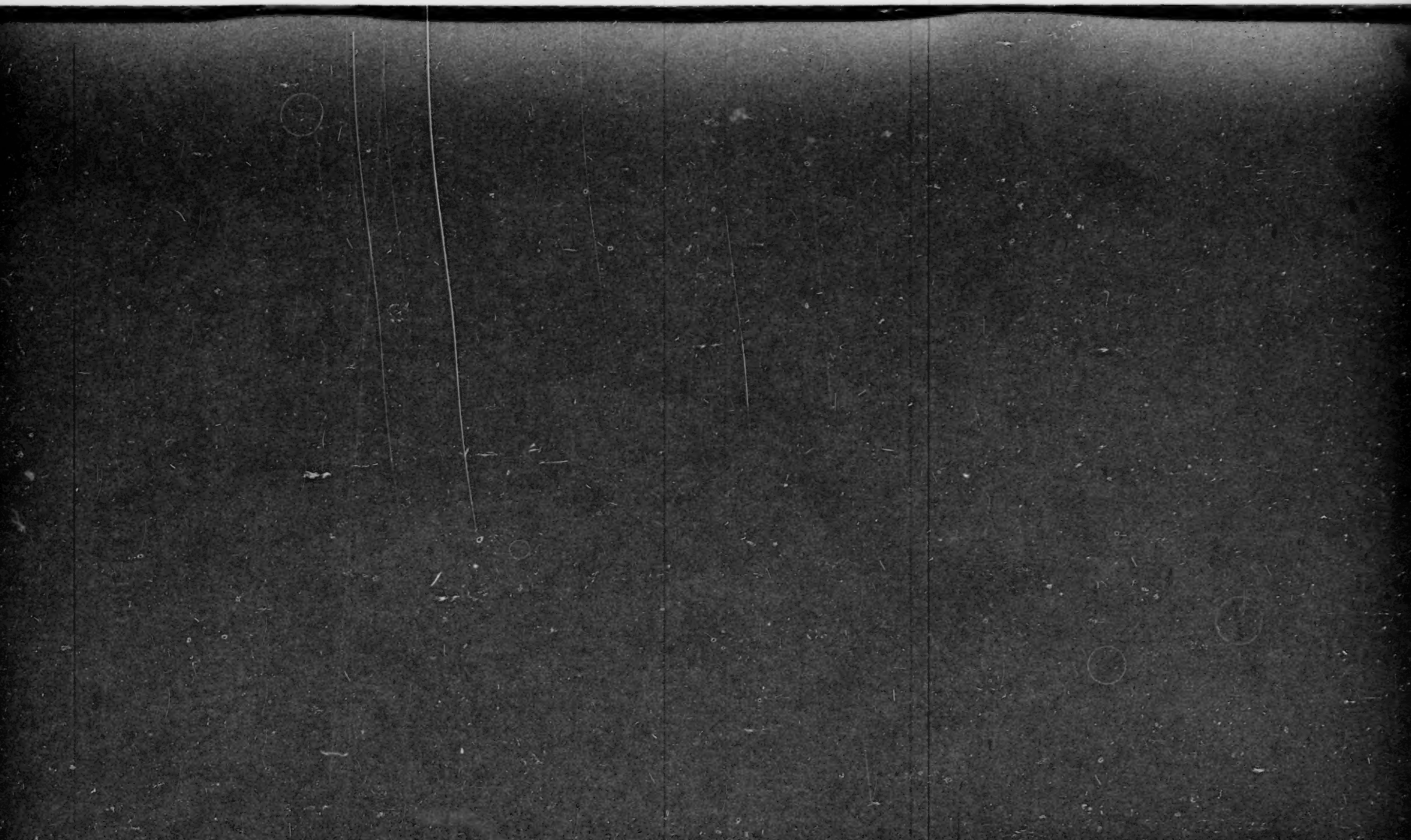
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QUESTIONS PRESENTED

1. Whether Section 402(a)(38) of the Social Security Act, 42 U.S.C. § 602(a)(38), which the District Court found requires non-needy children to become welfare recipients and assign their child support to the State in order for their needy half-siblings to receive Aid to Families with Dependent Children, effects a taking of the property of appellee child support recipients.

2. Whether 42 U.S.C. § 602(a)(38) violates the substantive due process rights of appellee child support recipients by directly interfering with the liberty interests of the children to the support and nurturance of their absent parents.

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Nos. 86-1140 and 86-1161

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In The

Supreme Court of the United States

October Term, 1986

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OTIS R. BOWEN, Secretary of Health and Human Services,
Appellant,

vs.

VERNITA BALDWIN, *et al.*,
Appellees.

JAMES G. LEDBETTER, In his official capacity as Commissioner of the Georgia Department of Human Resources,
Appellant,

vs.

VERNITA BALDWIN, *et al.*,
Appellees.

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On Appeal from the United States District Court for the Northern District of Georgia

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MOTION TO AFFIRM

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The jurisdictional statements in these appeals raise basically the same two issues, which address the meaning and constitutionality of Section 402(a)(38) of the Social Security Act. First, as framed more narrowly by the state appellant,[1] is the question of whether Section 402(a)(38)

---

[1] The federal appellant frames the issue as a filing unit one only: "[w]hether Section 402(a)(38) of the Social Security Act, 42 U.S.C. (Supp. II) 602(a)(38), which provides that all parents, brothers and sisters who live together shall constitute a single filing unit for purposes of the Aid To Families With Dependent Children (AFDC) program, is unconstitutional as violative of the Takings Clause or the Due Process Clause of the Fifth Amendment."

of the Social Security Act, 42 U.S.C. § 602(a)(38), the sibling deeming rule, which the district court found requires non-needy children to become welfare recipients and assign their child support to the state in order for their needy half-siblings to receive Aid to Families with Dependent Children, effects a taking of the property of appellee child support recipients. The second question is whether 42 U.S.C. § 602(a)(38) violates the substantive due process rights of appellee child support recipients by directly interfering with the liberty interests of the children in the support and nurturance of their absent parents. Appellees move this Court to affirm the district court's decision.

o

A. Summary of the Proceedings

Appellees, Vernita Baldwin and her three children, Schlonda, Lapheitta, and Wilnetta, Aid to Families with Dependent Children [hereinafter cited as AFDC] recipients, and children formerly supported by child support, filed a statewide class action suit on October 29, 1985, in the United States District Court for the Northern District of Georgia challenging the constitutionality of 42 U.S.C. § 602(a)(38), and corresponding federal and state regulations. Appellees sought declaratory and injunctive relief to prohibit appellants from requiring the custodial parent of children who receive child support payments to apply for AFDC benefits and assign the child support payments to the state as a condition of their needy half-siblings' eligibility for AFDC pursuant to 42 U.S.C. § 602(a)(26)(A).

On July 1, 1986, the district court certified two sub-classes of mothers and children who receive AFDC and are affected by Section 602(a)(38). The first sub-class is comprised of all present, past, and future AFDC recipients or applicants in Georgia who have had, or may have benefits denied, reduced, or terminated due to appellants' challenged regulations and statute. The second sub-class is comprised of all past, present, and future minors who are recipients of legally restricted child support who have had or may have to apply involuntarily for AFDC benefits, or leave their AFDC-recipient family unit because of appellants' challenged statute and regulations. In the same Order, the district court granted the Motion to Intervene of Brenda Maffett on behalf of herself and her children Tanya Maffett, Herley Maffett, Jermaine Maffett, Regina Maffett, and Melissa Maffett.

On October 17, 1986, the district court issued an Order granting appellees' Motion for Summary Judgment, declaring unconstitutional Section 602(a)(38), and granting appellees a permanent injunction. The district court found Section 602(a)(38) violated the constitutional rights of appellee children with child support who live with AFDC recipient half-siblings in two respects. First, Section 602(a)(38) effects a taking without just compensation, and second, it abridges appellee child support recipients' substantive due process rights.

The district court found that Section 602(a)(38) effects a taking of the child support of recipients without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution. The court concluded that child support recipients have a property interest in the support defined by Georgia state law. *Bald-*

win v. Ledbetter, 647 F. Supp. 623, 631 (N.D. Ga. 1986). The court found "[b]ecause child support payments over and above the $50 disregarded[2] are paid to the AFDC family unit in satisfaction of a portion of the payment standard for the family, there is undeniably a diminution in the value of the child support recipient's property interest." *Id.* at 631-32 (footnote added). The court also recognized the non-voluntary nature of the sibling deeming rule which forces children like Wilnetta and Lapheitta Baldwin to support their sister whom they are not legally obligated to support. In finding that the taking was without just compensation, the court stated that it could not conclude that the

> rather intangible guarantees which defendants postulate amount to just compensation would be equivalent to a cash payment of the amount of child support payments which child support recipients are now forced to spend upon the AFDC family unit. For example, the court cannot assume that Wilnetta and Lapheitta Baldwin would accept the status of a ward of the state in return for anything less than the payment in cash of the money which they are forced to spend on the other members of their family.

Id. at 634.

The district court also held that Section 602(a)(38) violates the fundamental liberty interest of a child support recipient to the support and nurturance of his or her parent. The court applied a rigorous or heightened scrutiny test in its analysis of the statute after finding there

---

[2] The first fifty dollars ($50) of any child support received by or on behalf of an AFDC family is paid to the family and not considered in determining the family's AFDC grant amount. 42 U.S.C. § 602(a)(8)(A)(vi).

was a direct and substantial interference with the rights at issue.

> In particular, these children stand to lose the two essential attributes of parenthood which this court has identified as at stake. First, these children face the prospect of less nurturing and guidance from their non-custodial parent as a result of fewer contacts with that parent. The non-custodial parent is apt to be discouraged from continuing to play a supportive role when his or her money is being collected by the state and paid to other children. Such resentment is evidenced by the record. Maffett Aff., ¶¶13-20. The mere interposition of the government as paying agent may itself mean less contacts with the child.

Id. at 639.

Recognizing these constitutional infirmities[3] with the statute, the district court enjoined the state appellant from terminating or reducing grants based on child support income received by co-resident siblings who do not choose to apply for or receive AFDC. *Id.* at 640-41. On October 22, 1986, the district court orally ordered the parties to agree upon a knowing and voluntary waiver form for the custodial parent to sign regarding the two constitutional

---

[3] The district court rejected appellees' other constitutional arguments. The court found that appellees were not the proper parties to raise a claim that the statute violates the Tenth Amendment by intruding impermissibly into state family law, an area traditionally regulated by state law. The court found there "is nothing inherent in the full faith and credit statute [28 U.S.C. § 1738] which limits congressional action taken in amending the AFDC family filing unit." *Id.* at 635. The court also concluded the Contract Clause does not limit Section 602(a)(38). Appellees' equal protection and procedural due process claims also were rejected. Procedural due process consideration was not necessary because of the court's finding that child support recipients suffer a taking without just compensation.

issues if the parent chooses for the child with child support to continue on AFDC. The oral order was reduced to writing in an Order dated November 17, 1986.

———o———

B. Statutory and Regulatory Framework

Congress created the AFDC program in 1935 under Title IV, Part A of the Social Security Act, 42 U.S.C. §§ 601-76. AFDC is a cooperative federal-state public assistance program intended to provide financial aid to needy and dependent children in their own homes or those of relatives in order to preserve and strengthen family life. *Id.* § 601. The United States Department of Health and Human Services [hereinafter cited as HHS] now administers the program on the federal level, and the Georgia Department of Human Resources [hereinafter cited as DHR] on the state level.

Under the AFDC program, benefits are paid and administered by states electing to participate in the program. In order to participate, however, a state must first obtain approval of its plan by HHS and the plan must conform with federal law. 42 U.S.C. § 604. States which administer an approved AFDC program can obtain from the federal government a percentage of the benefits paid and the administrative costs incurred. *Id.* § 603.

The Social Security Act requires that as a condition of eligibility for AFDC, the caretaker parent must cooperate in obtaining support payments from the absent parent, 42 U.S.C. § 602(a)(26)(B), and assign the child's

support payments to the state welfare department. *Id.* § 602(a)(26)(A). States which participate in the AFDC program must establish a separate organizational unit for child support collection activities. 42 U.S.C. § 651 *et seq.*

Only "dependent" children within the meaning of 42 U.S.C. § 606(a) are eligible for AFDC benefits. In order to be "dependent," the child not only must show financial need, but must also establish that he or she is deprived of parental care or support because one or both parents are dead, absent from the child's home, or incapacitated.

The amount of payment to a family receiving AFDC also depends upon the income and resources that are actually and legally available to provide for the support and maintenance of those claiming aid. 42 U.S.C. § 602(a)(7); 45 C.F.R. § 233.20(a)(3)(ii)(D). *See Van Lare v. Hurley,* 421 U.S. 338 (1975); *Lewis v. Martin,* 397 U.S. 552 (1970); and *King v. Smith,* 392 U.S. 309 (1968). "To determine the income eligibility of grant group and/or the amount of the assistance payment, a budget or series of budgets must be computed based upon the Ceiling Test limit, the Standard of Need for Georgia, and/or the Payment Standard for Georgia." Georgia Department of Human Resources *Assistance Payments Manual,* page 1 of IV-115. If the grant group meets the ceiling test, then eligibility and grant amount are determined by reference to the state standard of need and the payment standard. The "standard of need" is a "fixed amount, established by the State,

that is a compilation of the *basic* budgetary needs for a specific number of persons for a calendar month." *Id.* (emphasis added).

The "payment standard" is "the maximum amount that can be paid to a specified AFDC household size for a calendar month. The AFDC Payment Standard in Georgia is based on a percentage of the Standard of Need. This percentage is subject to change dependent upon funding for the AFDC program in Georgia." *Id.* at 4. In Georgia the payment standard as of April 1986 is seventy percent of the standard of need; previously it was sixty-one percent. In other words, the *absolute maximum* amount of AFDC a given group can receive is seventy percent of the amount needed for *basic subsistence.* Moreover, Georgia's standard of need currently is only forty-five percent of the federal poverty level which means that Georgia AFDC recipients can receive a maximum AFDC payment of only thirty-two percent of the poverty level. *See* 51 Fed. Reg. 5106 (Feb. 11, 1986).[4] Clearly, for individuals living at this absolute low end of the income scale, even minor reductions in AFDC payments would inevitably have major, irreparable and devastating effects on a family's ability to survive.

The amount of any grant received by an AFDC assistance group, with no income or unearned income only, is determined by subtracting the monthly "income" of the assistance unit from the state's monthly payment stan-

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[4] For one person, the Standard of Need is two hundred and two dollars ($202) and the Payment Standard is one hundred forty-one dollars ($141) per month. The federal poverty level for one person is four hundred forty-seven dollars ($447) per month.

dard. The amount remaining will be the unit's AFDC monthly grant.

Until the passage of the Deficit Reduction Act of 1984, HHS and DHR did not consider legally restricted child support available to other children in a family who were otherwise eligible for AFDC. A child who received legally restricted child support did not have to apply for AFDC benefits. If the child was receiving AFDC benefits before support payments began, the supported child could be removed from the grant, the assignment of support could be terminated, and the support would be paid directly to the caretaking parent on behalf of the child. 42 U.S.C. § 657(c); 45 C.F.R. §§ 232.20(a)(1), 302.32(b).

The Deficit Reduction Act of 1984, effective October 1, 1984, amended the Social Security Act to require that under certain circumstances the "income" of a half-sibling or a non-needy child must be considered in determining the AFDC eligibility of the needy child. 42 U.S.C. § 602(a)(38). The amendment at paragraph (38) provides that

> in making a determination under paragraph (7) with respect to a dependent child and applying paragraph (8), [regarding income disregarded], the state agencies shall (except as otherwise provided in this part) include—
>
> . . .
>
> (B) Any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of Section 606(a), if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister

> shall be included in making such determination and applying such paragraph with respect to the family . . . .

Then-Secretary Heckler promulgated interim final regulations purporting to implement the sibling deeming rule at 49 Fed. Reg. 35586, 35599 (Sept. 10, 1984), codified at 45 C.F.R. § 206.10(a)(1)(vii)(B). This regulation mandates that a state plan require

> (vii) [f]or AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:
>
> . . .
>
> (B) Any blood-related or adoptive brother or sister.

The legally restricted child support payments then are considered in determining the eligibility of the child's half-siblings, 45 C.F.R. § 233.20(a)(1), and must be assigned to DHR. 42 U.S.C. § 602(a)(26)(A); 45 C.F.R. § 232.11 (a)(1)(i).

Defendant Ledbetter, Commissioner of the Georgia Department of Human Resources, promulgated Eligibility Services County Letter No. 84-44 in which he notified all county Departments of Family and Children Services that

> [b]eginning October 1, 1984, the needs and income of the parent(s) and all minor siblings or half-siblings living with a dependent child who applies for or receives AFDC must be included for eligibility determination and benefit calculation. SSI recipients, step-brothers, and step-sisters are excluded from this requirement. In other words, an A/R [applicant/re-

> cipient] will no longer have the option to voluntarily exclude the needs or income of herself or a child from a grant. Similarly, there is no longer any restricted income.
>
> As stated, the A/R does *not* have the option to exclude any family member. Therefore, if the A/R refuses to include the income and needs of a child or herself or we are unable to verify the income of a previously excluded child, total ineligibility of the entire group results as we are unable to determine eligibility.

The Child Support Amendments of 1984 added 42 U.S.C. § 602(a)(8)(A)(vi) which provides that up to the first fifty dollars child support income collected for an AFDC grant group will be disregarded in calculating the AFDC grant. The only legislative history is that a "monthly disregard of $50 of child support received by a family is established. The disregard is applied at eligibility determination and benefit calculation. The provision is effective October 1, 1984." H. CONF. REP. NO. 861, 98th Cong., 2d Sess. 1407, reprinted in 1984 U.S. CODE CONG. & AD. NEWS 1407, 2095.

Under Georgia law, biological parents have a statutory duty to support and maintain their children. O.C.G.A. §§ 19-7-2 and 19-7-24 (1982). Court ordered child support is a substitute for this statutory duty and is designed to provide a child with his or her customary needs commensurate with the non-custodial parent's ability to pay. *See Clavin v. Clavin*, 238 Ga. 421, 233 S.E.2d 151 (1977); *Golden v. Golden*, 230 Ga. 867, 199 S.E.2d 796 (1973). The custodial parent has a fiduciary duty to spend court ordered support monies for the sole benefit of the child for whom support is paid. *Stewart v. Stewart*, 217 Ga. 509,

123 S.E.2d 547 (1962); *Thomas v. Holt*, 209 Ga. 133, 70 S.E.2d 595 (1952). A court in equity may remove a child from the custody of a parent who breaches this duty or impose liability for loss of restricted support monies on said parent. O.C.G.A. § 53-13-84 (1982). Moreover, if the putative father of illegitimate children freely and voluntarily contracts with the mother to support said children, these children, as third party beneficiaries can sue to enforce their contractual rights to support. *Worthington v. Worthington*, 250 Ga. 730, 735, 301 S.E.2d 44 (1983).

Section 602(a)(38) imposes inconsistent legal obligations on the caretaker. On the one hand, under the sibling deeming rule with the supported child included in the AFDC unit, the caretaker might attempt to meet his or her legal obligations by using an amount equal to the child support to meet the needs of the supported child. This conduct violates the Social Security Act which requires the caretaker to use AFDC benefits in the best interests of the child for whom they are paid. 42 U.S.C. § 605. On the other hand, if the caretaker fails to use a reasonable portion of the AFDC for the unsupported children, the state may provide for protective payments, 42 U.S.C. § 606(b)(2), payment to a legal representative, 42 U.S.C. § 1311, or may remove the needy child from the home. 42 U.S.C. §§ 605, 672(a)(1).

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C. Summary of the Facts

The Baldwin and Maffett families exemplify the operation and harsh effects of the sibling deeming rule. *Baldwin v. Ledbetter,* 647 F. Supp. at 627-28. Vernita Baldwin is the mother of three minor children: Wilnetta, Lapheitta, and Schlonda Baldwin. Prior to October 1, 1984, Ms. Baldwin and Schlonda received AFDC in the amount of one hundred seventy-four dollars ($174) per month, the maximum grant amount for an assistance group of two at that time. Schlonda's father, Bobby Ellison, paid child support to the Muscogee County Child Support Recovery Unit. Wilnetta and Lapheitta received two hundred dollars ($200) each month in child support from their father, Willie King, pursuant to a court approved agreement.

Effective October 1984, Ms. Baldwin was forced to include all three children in the AFDC grant rather than risk losing eligibility for Schlonda and herself. Although the payment standard for four persons was two hundred forty-five dollars ($245), the Baldwins' AFDC grant was reduced to ninety-five dollars ($95) due to the sibling deeming rule. The total monthly income for four persons was reduced from three hundred seventy-four dollars ($374) to two hundred ninety-five dollars ($295), including the fifty dollars ($50) disregard. Moreover, as a condition of AFDC eligibility Ms. Baldwin was required to assign to the state the child support rights of Wilnetta and Lapheitta pursuant to 42 U.S.C. § 602(a)(26)(A).

Brenda Maffett on behalf of herself and five children intervened as Plaintiffs. Prior to 1984, Ms. Maffett received AFDC for herself and some of her children. Her daughter Melissa Maffett was not included in the AFDC

grant because her father Tyrone Davis was supporting her by paying ten dollars per week to Ms. Maffett. He also would take her to the doctor when she needed to go. Ms. Maffett used Melissa's child support to take care of her needs.

As a result of the sibling deeming rule, Melissa was placed on AFDC against Ms. Maffett's wishes. Although her inclusion did not result in a loss of income to the Maffett family because the child support payments were less than the payment standard, the sibling deeming rule caused Ms. Maffett problems with Melissa's father. Mr. Davis has been harassed by the child support enforcement officials. Mr. Davis does not like this involvement and the fact that his child support will go to support Ms. Maffett's other children. He informed Ms. Maffett that if he had to continue to deal with the child support officials, that he would stop coming to see Melissa and just mail the child support.[5]

The experiences of these two families demonstrate some of the problems which result from the sibling deeming rule. Forcing children who receive child support onto welfare and to assign their support rights to the state merely because they live with half-siblings who need to receive AFDC is unacceptable. Before the 1984 amendment of § 602(a)(38), families could choose whether independently supported children would apply for AFDC. The sibling deeming rule causes the reduction or termination

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[5] This result also is acknowledged by expert testimony. *See* Declaration of Judith Cassetty, 9-11, Attachment B to Opposition to Application for Stay on Appeal of Judgment of the United States District Court for the Northern District of Georgia.

of AFDC benefits merely because one or more children receive child support. This rule is mandatory despite its conflict with state court orders and law which require the custodial parent to use the support solely for the benefit of the child. Moreover, the sibling deeming rule affects families in which the parents do not wish a particular child to receive AFDC merely because the child lives with needy half-siblings. The district court correctly found the sibling deeming rule violates the rights of the appellee child support recipients. The court's decision provides a choice for the custodial parent whether the child should be placed on AFDC.

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ARGUMENT

The question of the constitutionality of 42 U.S.C. § 602 (a)(38) is an important issue for all states as well as applicants, recipients and those terminated from AFDC due to the statute's application. A summary affirmance of the district court's decision would require lower courts to declare unconstitutional this provision. In light of the court's noting of probable jurisdiction on December 8, 1986, in the similar cases of *Bowen v. Gilliard,* No. 86-509, and *Kirk v. Gilliard,* No. 86-564, appealing 633 F. Supp. 1529 (W.D.N.C. 1986), appellees recognize the Court probably will note jurisdiction on these substantial questions. However, appellees assert that the district court's decision should be affirmed.

The federal appellant included copies of his Jurisdictional Statements in the *Gilliard* and *Bowen v. Lesko,* No.

86-744, cases with his Jurisdictional Statement in the instant case. In these statements the federal appellant lists the large number of cases which are pending in the lower courts on the sibling deeming rule. The appellees in *Gilliard* not only seek affirmance but alternatively request constitutional review of Section 602(a)(38) as applied to the facts of the case. If the Court limits its ruling to the facts in *Gilliard*, appellees request the opportunity for full briefing and oral argument.

A. The District Court Correctly Found That 42 U.S.C. § 602(a)(38) Works A Taking Of Appellee Child Support Recipients' Property

The lower court employed the proper analysis in reaching its decision that the sibling deeming rule effects a taking without just compensation of the property of appellee child support recipients who live with half-siblings who receive AFDC. In Count Two of their Complaint, appellees alleged the sibling deeming rule, 42 U.S.C. § 602(a)(38), deprives appellees of property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

The first step in this analysis is whether there are property interests at issue which are protected by the Fifth and Fourteenth Amendments. The court found Georgia state law recognizes the children's property interest in the support. Moreover, the court acknowledged that

> [i]n addition to mandating an enforceable right to child support on behalf of minor children, Georgia law requires that the custodial parent spend child support monies for the benefit of the child. [*Thomas v. Holt*, 209 Ga. 133, 170 S.E.2d 595 (1952)]; *see also Stewart*

> *v. Stewart,* 217 Ga. 509, 123 S.E.2d 547 (1962). That is, the custodial parent acts as trustee of the child support monies for the child as beneficiary. *Id.*

Baldwin v. Ledbetter, 647 F. Supp. at 631.

The second step of the district court's analysis is the extent to which the appellee child support recipients suffer a reduction in the value of their child support. Prior to the enactment of the sibling deeming rule, Wilnetta and Lapheitta Baldwin each had the right to one hundred dollars per month in child support paid by their father. After October 1, 1984, their two hundred dollars is pooled by the state in determining the amount of the entire family's AFDC grant minus the fifty dollar disregard. Thus, Wilnetta and Laphietta only receive a pro rata share of the AFDC, including the disregard, in the amount of two hundred ninety-five dollars ($295). "In short, child support recipients in the position of Wilnetta and Lapheitta Baldwin are coerced by the amendment into supporting those they have no obligation to support, and this will always be the case where the amount of income deemed is greater than the amount of government assistance paid." *Id.* at 632 (footnote omitted).

The state appellant argues that whatever taking of child support occurs is compensated for by the family's access to the state's child support collection services. These services, however, are available for the asking, even to non-AFDC families, pursuant to 1984 statutory changes that require states to provide child support recovery services to families that request them. Non-AFDC families pay a nominal annual fee. 42 U.S.C. § 654(4)(B)(6); 45 C.F.R. § 302.33. On the other hand, governmental actions

to enforce child support payment can be detrimental, rather than beneficial, to the family, as the court below recognized. *Baldwin v. Ledbetter,* 647 F. Supp. at 627-28. Thus, the alleged "compensation" offered by the state is not an unmixed blessing.

Further, state appellant asserts that the receipt of medical assistance, or Medicaid, is further compensation for the deprivation of child support. Medicaid is only a benefit if one needs medical assistance; it is not necessarily "just" compensation for the deprivation of a specific amount of cash each month. Moreover, the children here may have been eligible for Georgia's medical assistance program in any case, as appellees argued below. Further, the record does not demonstrate appellees received Medicaid benefits, notwithstanding the state appellant's assertion to the contrary. State Appellant's Jurisdictional Statement at 5.

The state appellant contends the operation of the sibling deeming rule does not directly take child support from any child. However, when the custodial parent is forced to assign his or her child's rights to child support to the state as a condition of eligibility for AFDC, the custodial parent, on behalf of the child, loses the child support. Therefore, there is a direct taking of the child's money which is prohibited. *See Webb's Fabulous Pharmacies, Inc. v. Beckwith,* 449 U.S. 163-65 (1980).

The state appellant relies upon cases concerning the limits of permissible commercial regulation to support his position on this issue. However, as the district court recognized, "unlike the economic actors in those cases, child support recipients have not subjected themselves to the

risk of regulation of the use of their child support payments. The coercive nature of the amendment makes clear that child support recipients do not voluntarily subject themselves to AFDC regulations." *Baldwin v. Ledbetter*, 647 F. Supp. at 633. Moreover,

> [b]ecause the state has collected [the child support] for the AFDC family unit, [the child support recipients] no longer have the right to possess the money themselves and the consequential power to exclude the state and its AFDC dependents from possession and use of the money. . . . Indeed, they are forced to use their property for the benefit of others. If the taking clause means anything, it means that the government cannot force child support recipients "to bear public burdens which in all fairness should be borne by the public as a whole."

Id. (citations omitted).

Appellants minimize the loss of support each month by appellee child support recipients. The Constitution, however, forbids *any* taking of property without just compensation; it is not limited to protecting property greater than a certain value. Proportionately, the loss to these children is extremely significant; it amounts to twenty-six percent of their entire monthly income. The equivalent for a person with a monthly income of one thousand dollars ($1,000), would be two hundred sixty dollars ($260), also clearly significant. Even if the amount of child support taken each month from class members is relatively small, in terms of actual dollar figures, it is their property. These children have been supported by their absent parents and should continue to be so supported. However, 42 U.S.C. § 602(a)(38) forces non-custodial parents to support children who are not theirs and takes without just

compensation the property of appellee child support recipients. Moreover, the sibling deeming rule requires non-needy, supported children to apply for AFDC or force their half-siblings to live without public assistance. This conflict does not strengthen family relationships, but rather severely diminishes a family's ability to survive. The district court analysis should be affirmed by this Court.

B. The District Court Correctly Found That 42 U.S.C. § 602(a)(38) Violates Appellee Child Support Recipients' Substantive Due Process Rights

In its October 17, 1986 Order, the district court found that 42 U.S.C. § 602(a)(38) violated appellee child support recipients' substantive due process rights. *Baldwin v. Ledbetter*, 647 F. Supp. at 639. The trial court recognized that the child support recipients' liberty interests were violated by the sibling deeming rule. The court further acknowledged the fundamental right of the child "to enjoy the nurturing and guidance afforded by a parent willing to discharge his or her obligations. . . . The fact of parental support is perhaps as important as any value which a parent can pass along to a child." *Id.* at 638.

This Court previously has acknowledged the tradition of preserving the sanctity of the family unit. In *Gilliard*, the district court cites *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977) which addressed this fundamental right.

> [F]amily life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. *Cleveland Board of Education v. LaFleur,* 414 U.S. 632, 639-40, 94 S.Ct. 791, 796, 39 L.Ed.2d 52 (1974). A host of cases, tracing their lineage to *Meyer v. Nebraska,* 262 U.S. 390, 399-401, [43 S.Ct. 625, 626-627, 67 L.Ed. 1042] (1923), and *Pierce v. Society of Sisters,* 268 U.S. 510, 534-35, [45 S.Ct. 571, 573, 69 L.Ed. 1070] (1925), have consistently acknowledged a "private realm of family life which the state cannot enter." *Prince v. Massachusetts,* 321 U.S. 158, 166, [64 S.Ct. 438, 442, 88 L.Ed. 645] (1944). *See, e.g., Roe v. Wade,* 410 U.S. 113, 152-153, [93 S.Ct. 705, 726, 35 L.Ed.2d 147] (1973); *Wisconsin v. Yoder,* 406 U.S. 205, 231-33, [92 S.Ct. 1526, 1541-42, 32 L.Ed.2d 15] (1972); *Stanley v. Illinois,* 405 U.S. 645, 651, [92 S.Ct. 1208, 1212, 31 L.Ed.2d 551] (1972); *Ginsberg v. New York,* 390 U.S. 629, 639, [88 S.Ct. 1274, 1280, 20 L.Ed. 2d 195] (1968); *Griswold v. Connecticut,* 381 U.S. 479, [85 S.Ct. 1678, 14 L.Ed.2d 510] (1965). . . . [additional citations omitted].

Gilliard v. Kirk, 633 F. Supp. at 1556. This line of cases employs a strict scrutiny standard, rather than the lower standard argued by appellants. The district court correctly employed a heightened scrutiny analysis urged by appellees because § 602(a)(38) is not merely social welfare legislation; it also impinges on familial rights, thus fundamental rights are involved.

While the facts in this case and the specific right to be supported and nurtured by one's non-custodial parent have

not been before this Court, the fundamental right is implicit in prior cases.[6] As the Court acknowledged in *Moore,*

> [t]o be sure, these cases did not expressly consider the family relationship presented here. They were immediately concerned with freedom of choice with respect to childbearing, *e.g., LaFleur, Roe v. Wade, Griswold, supra,* or with the rights of parents to the custody and companionship of their own children, *Stanley v. Illinois, supra,* or with traditional parental authority in matters of child rearing and education. *Yoder, Ginsberg, Pierce, Meyer, supra.* But unless we close our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the Fourteenth Amendment's Due Process Clause, we cannot avoid applying the force and rationale of these precedents to the family choice involved in this case.

Moore v. City of East Cleveland, Ohio, 431 U.S. at 500-01.

The loss of child support each month by two of Ms. Baldwin's children may not appear to be a large amount, but the amount does not denigrate these children's fundamental right to their support.[7] The family's total income

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[6] State appellant cites *Lyng v. Castillo,* 477 U.S. —, 106 S.Ct. 2727 (1986) in support of its position that there is no direct and substantial interference with a fundamental right. However, unlike the food stamp recipients in *Castillo,* the appellee child support recipients like Wilnetta and Lapheitta Baldwin were not AFDC recipients before the enactment of the sibling deeming rule. *Castillo* also involves a federal regulation which keeps families together whereas the sibling deeming rule could cause families to split, at the same government's convenience. Moreover, enabling families to live together, particularly ones with small children, furthers the purpose of AFDC.

[7] The appellee child support recipients' state court orders also are violated by the sibling deeming rule. State courts never contemplate that the court ordered amount would be used to support other children who do not belong to the support-paying parent; indeed it would be unlawful for a court to do so given that there is no legal obligation on the parent to support those other children.

was reduced from three hundred seventy-four dollars ($374) to only two hundred ninety-five dollars ($295). Moreover, the record does support the trial court's conclusion that the children with child support in the class can lose the nurturing and guidance of their non-custodial parents. Declaration of Judith Cassetty, *supra.* Moreover, the denial of a child's right to support, guidance and nurturing by a non-custodial parent is not rationally related to Congress' alleged objective of reducing the federal deficit. Appellees submit this Court should look to the basic principles of our Constitution and find that this statute offends those relied upon by the district court.

CONCLUSION

This case should be affirmed. Alternatively, the Court should consider this case based on its disposition of *Bowen v. Gilliard,* No. 86-509, and *Kirk v. Gilliard,* No. 86-564. If the Court finds Section 602(a)(38) unconstitutional as applied to the facts in *Gilliard,* appellees request an opportunity for full briefing and oral argument.

Respectfully submitted,

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February 1987

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